UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

TERAQUE, INC., Plaintiff V. CHARLES D. ESDAILE, CHRISTOPHER M. HAYES, ROBERT MILLER, ALTENEX, LLC, ALTENEX RENEWABLE CAPITAL, LLC and JOHN DOE Defendants	CIVIL ACTION NO.

COMPLAINT

PARTIES

1. Plaintiff Teraque, Inc. ("Teraque") is a Massachusetts business corporation with a usual place of business in Bolton, MA. Donald Roy Airey ("Airey") is the sole owner of Teraque. At all times material to this complaint, Airey was also the sole officer, sole director and principal stockholder of Mark Three Software, Inc. ("Mark Three").

2. Defendant Charles D. Esdaile ("Esdaile") resides in Essex County, Massachusetts.

3. Defendant Christopher M. Hayes ("Hayes") resides in Essex County, Massachusetts.

4. Defendant Robert Miller ("Miller") works in Boston and resides in Massachusetts. Miller is a defendant only as to Counts for copyright infringement.

5. Defendant Altenex, LLC (referred to here as "Altenex III")[1] is a Delaware limited liability company whose principal place of business is in California. It is the successor by merger of a Massachusetts limited liability company, also named Altenex, LLC ("Altenex II"). It has a place of business in Boston and regularly conducts business in Massachusetts.

[1] The relationship of the four "Altenex" LLCs, referred to here as I, II, III and IV, is explained in detail below.

6. Defendant Altenex Renewable Capital, LLC ("Altenex IV") is a Delaware limited liability company which, upon information and belief, maintains a place of business in Boston, regularly conducts business in Massachusetts and is a successor of defendant Altenex III.

7. "John Doe" refers to persons or entities who have received distributions from Altenex II and/or Altenex III.

JURISDICTION AND VENUE

8. This action includes claims under the Copyright Act of 1976 as amended, 17 U.S.C. §101 et. seq., as well as claims for breach of contract, conversion, palming off, and theft of trade secrets under the statutory and common law of Massachusetts. This Court has subject matter jurisdiction under 28 U.S.C. §§1331, 1338 and 1367.

9. Venue is proper under 28 U.S.C. §1391 and the case is properly brought in the Central Section under L.R. 40.1 because the plaintiff is located in Worcester County, each of the defendants are residents or have a physical presence in Massachusetts, and the claims arise from conduct that occurred in Massachusetts.

FACTS

Creation of the "Fluid Trade IP"

10. Airey is a highly-skilled and experienced computer software architect, engineer and entrepreneur who (among other successful projects) worked for Fischer Black's Quantitative Strategy Group at Goldman Sachs, was a founding partner of a company sold to Barclay's PLC in 1998, and over a 7-year period from approximately 2001 to 2008, and at an estimated expense of $1 million, developed a software platform for an asset exchange designed to bring together counterparties in web-based transactions. The principal application of the software as it existed during that period of time focused on the financial industry including a "Dark Pool" equity exchange, but the software (especially an element known as the "Data Model Generator") was flexible and could be adapted to create exchanges for many other classes of assets. Airey conducted these activities through Mark Three Software, Inc. ("Mark

Three”), of which he was the sole officer, sole director and principal owner. Mark Three owned the software at that time.

11. In 2008, defendants Hayes and Esdaile enticed Airey and Mark Three to join Fluid Trade, Inc. (“Fluid Trade”), of which Hayes and Esdaile were the principal owners, with representations that they had acquired $4 million in financing that could be used to develop and market multiple exchanges for alternative (illiquid) assets based on the Mark Three platform.

12. On or about October 23, 2008, in reliance on Hayes’ and Esdaile’s representations, Mark Three entered into an Asset Purchase Agreement whereby it transferred the asset trading platform (the “Mark Three/Fluid Trade Software”) to Fluid Trade in exchange for one million shares of Fluid Trade stock. In addition, Airey entered into an Employment Agreement to become Fluid Trade’s Chief Technology Officer based on a salary and options to purchase 800,000 shares of Fluid Trade at a price of $3.00 per share.

13. Airey’s principal responsibility as Chief Technical Officer of Fluid Trade was to adapt and further develop the Mark Three/Fluid Trade Software for new applications on behalf of Fluid Trade’s only customer, Global Client Solutions, LLC (“GCS”) and its subsidiary Debt Exchange, LLC (“Debt Exchange” also known as “DebtTrak”) by creating a debt settlement service for consumer debt. This service allowed counterparties to find each other through a search algorithm, negotiate the terms of a deal and generate a contract electronically using a template when all parties agreed to the terms.

Disputes With Hayes & Esdaile Including Prior Litigation

14. In October 2009, as the Debt Exchange project was approaching important deadlines, Fluid Trade announced a furlough of all employees including Airey. As Airey discovered, Hayes and Esdaile had lied when they told him they secured $4 million in financing. In fact, there was only $2 million in financing when Airey agreed to the transaction. The source of the seed funds, Stanford Capital Management (“SCM”), delivered an additional $1 million before being shut down by the U.S. Securities and Exchange Commission in February 2009 for running a “massive Ponzi scheme”. Moreover, Hayes and Esdaile had depleted Fluid Trade’s resources by secretly taking salaries and perks

in excess of $750 K, or 25% of the seed capital, from a startup company with no revenue and without Airey's knowledge or consent.

15. Worse yet (as Airey eventually discovered), Hayes and Esdaile had provided illegal kickbacks to the wives of officers of SCM as inducements for them to cause SCM to approve investments in Fluid Trade. The illegal kickbacks were in the form of Fluid Trade stock, for which the kickback recipients paid nothing other than promising to use their influence as SCM executives to cause SCM to make the investments. Because of the kickbacks, SCM did eventually invest $3 million before the Ponzi scheme was discovered, but the remaining $1 million never materialized. Were it not for the illegal kickbacks to wives of officers of SCM, which were deliberately disguised through the use of sham entities, Hayes and Esdaile had no viable commitments for the promised $4 million.

16. Shortly after the furlough of Fluid Trade employees, Hayes and Esdaile informed Airey that Jeffrey Boatman, the Chief Technology Officer of GCS, was planning to visit Fluid Trade to review the status of the software development project. They asked Airey to attend the meeting.

17. Hayes and Esdaile designed the meeting with Mr. Boatman to create a false impression that Fluid Trade was still fully operational and on track to comply with delivery deadlines by asking furloughed employees to attend the meeting and providing status updates as if Fluid Trade was conducting business as normal.

18. However, based on Fluid Trade's finances and the fact that it had furloughed all the personnel who were working on the project, Airey believed that Hayes and Esdaile were deliberately and unethically misleading Boatman and GCS, and that GCS was at risk of substantial harm if it relied on Hayes' and Esdaile's deceptive representations.

19. Believing that Hayes and Esdaile had made him complicit in their deception of Boatman and GCS, and that his engineering staff was being exploited, Airey resigned from Fluid Trade on November 6, 2009. In addition, because he felt ethically and professionally compromised by their willfully deceptive conduct, Airey notified Boatman (with whom he had a professional relationship) that the deadlines for release of the product couldn't be met because the staff had been furloughed.

20. On January 20, 2010, Fluid Trade commenced an action entitled Fluid Trade, Inc. v. Global Client Solutions, LLC and Donald R. Airey, Civil Action No. SUCV2010-00248-BLS2, which falsely accused GCS and Airey of misappropriating the Fluid Trade Software. Airey and GCS denied liability.[2] Airey and Mark Three then brought an action entitled Mark Three Software, Inc. and Donald Roy Airey v. Fluid Trade, Inc. Investment Service Advisors, LLC, Alpha Risk Management, LLC, Christopher M. Hayes, Charles D. Esdaile, Mark Stys, Jason D'Amato, Carolyn Stys, and Darla D'Amato, Civil Action No. SUCV2010-3851-BLS2, which accused Hayes, Esdaile and Fluid Trade of fraud and misrepresentation relating to the sale of Fluid Trade stock, including in the transactions with Airey and Mark Three. The two cases were consolidated, and will be referred to here as the "Fluid Trade Litigation."

Hayes and Esdaile Secretly Misappropriate Corporate Opportunities During The Course Of The Fluid Trade Litigation

21. Throughout the Fluid Trade Litigation, Hayes, Esdaile and Fluid Trade falsely maintained that Airey's actions had destroyed Fluid Trade and that the company had become defunct. Their representations to that effect included repeated statements made in pleadings, affidavits, briefs and a Joint Final Pretrial Memorandum.

22. Contrary to such statements and representations, Hayes and Esdaile, through Fluid Trade, continued to employ defendant Robert Miller and three other programmers for at least five months after January 2010 to develop and improve the Mark Three/Fluid Trade Software and related technology in schemes that would eventually divert assets and opportunities based on the Mark Three/Fluid Trade Software, without consideration, from Fluid Trade into other entities of which Hayes and Esdaile were officers, directors and/or managers, and of which Hayes and Esdaile were the principal owners.

23. In order to carry out this scheme, Hayes and Esdaile: (i) recruited innocent parties who knew nothing of the Fluid Trade Litigation to provide expertise and advantageous contacts; (ii) failed to

[2] Fluid Trade's claims against GCS were severed and referred to arbitration which rejected Fluid Trade's claims in their entirety and culminated in an arbitration award for GCS on all issues, while claims between Airey, Fluid Trade, Hayes and Esdaile remained in Superior Court.

disclose the Fluid Trade Litigation to those innocent parties; (iii) offered those innocent parties ownership in the new entities as inducements to further Hayes' and Esdaile's selfish purposes; and (iv) eventually engaged in fraud to freeze those innocent parties out of the new enterprise in a pattern that resembles their conduct in eliminating Airey and Mark Three from Fluid Trade. By way of example (but without limiting the scope of this allegation):

a. On or about March 25, 2010, Hayes and Esdaile formed a new entity named Market Maker Solutions, LLC ("MMS"), a Massachusetts LLC that shared Fluid Trade's office in Boston. Hayes and Esdaile each owned 30% of MMS and were officers and members of its board of managers. The other members included Daniel Petrucci and A. Duncan McIntyre, with ownership interests of 30% and 10% respectively. The goal was to create an energy trading and consulting business.

b. Also, on or about March 25, 2010, Hayes and Esdaile caused Fluid Trade to enter into a Software Development, License, System Use and Hosting Agreement with MMS ("MMS Software Development Agreement"), attached hereto at **Exhibit A,** for the purpose of building a web-hosted, computerized data matching, trading and processing system for the environmental markets and any derivative thereof. The features described in the agreement are entirely derivative of the Mark Three/Fluid Trade Software. Moreover, Schedule A to the MMS Software Development & License Agreement, entitled "System Specifications," is a verbatim duplicate of specifications that Airey created when he became Chief Technical Officer of Fluid Trade to describe the Mark Three/Fluid Trade Software as it existed in 2008, when the goal was to create a web-hosted asset exchange platform. See **Exhibit B**. Hayes signed the MMS Software Development Agreement & License Agreement on behalf of Fluid Trade, while Esdaile and Petrucci signed on behalf of MMS. Moreover, Fluid Trade and MMS listed the same office address, namely, 7 Liberty Square, Boston, MA.

c. On or about April 5, 2010, MMS formed Altenex, LLC ("Altenex I"), a Delaware LLC of which MMS owned 67% and the remaining 33% was owned by Sloan Technology Ventures ("STV"). Lane Sloan, the principal of STV, was a highly regarded and recently retired energy executive whose role was to introduce Altenex to potential corporate customers. The purpose of Altenex I was to develop business opportunities for MMS, including with Dow Chemical ("Dow").

d. On or about May 12, 2010, on letterhead with the heading "Altenex® powered by Fluid Trade," Altenex I offered Dow a "Charter Membership" (which included certain rights to invest at a future date) at a price of $25,000, attached hereto at **Exhibit C**.

e. On or about May 25, 2010, MMS promised to pay Fluid Trade $400,000 to develop a demonstration unit (hereinafter, the "Demonstration Unit") based on the Mark Three/Fluid Trade Software ("MMS Promissory Note"), attached hereto at **Exhibit D**. The purpose was to demonstrate a web-hosted, computerized data matching, trading and processing system for the environmental markets and any derivative markets in order to persuade Dow to become a "Charter Member" of Altenex I. Upon information and belief, the Demonstration Unit relied on the Mark Three/Fluid Trade Software platform to trade energy and carbon credits.

f. On or about October 15, 2010, Dow entered into a Charter Membership Agreement with Altenex I pursuant to which Altenex I undertook to provide an "advanced climate trading technology platform *powered by Fluid Trade* with charges associated with deal making activities." (Emphasis added).

g. Contrary to the Altenex I letterhead and the Charter Membership Agreement, Altenex I had no right to use any of Fluid Trade's technology.

h. Nevertheless, on or about November 3, 2010, Dow and Altenex I issued a joint press release to the effect that Altenex I would enable Dow "to efficiently communicate their unique clean energy and carbon offsetting needs to a large audience of qualified service providers who respond to proposals and place bids on projects through the company's secure, technology based marketplace platform." – a function that the Mark Three/Fluid Trade IP was designed to perform, hereto attached at **Exhibit E**.

i. Upon information and belief, MMS never paid Fluid Trade for use or development of the web-hosted, computerized data matching, trading and processing system for the environmental markets, and never paid the MMS Promissory Note.

24. The opportunities that Hayes and Esdaile diverted and attempted to exploit through MMA and Altenex I were corporate opportunities that belonged to Fluid Trade.

25. As a result of disputes with the minority owners of MMS and Altenex I that resembled their dispute with Airey during his tenure at Fluid Trade, Hayes and Esdaile embarked on a scheme to secretly divert the assets and opportunities that MMS and Altenex I had developed, including the "advanced climate trading technology platform powered by Fluid Trade" and the opportunity to do business with Dow, into new entities in which Airey, Mark Three, Petrucci, Sloan and STV would have no interest.[3] Furthermore, Hayes and Esdaile concealed and misrepresented their plans and intentions to misappropriate the opportunities. By way of example (but without limiting the scope of this allegation):

a. On June 2, 2011, Hayes and Esdaile created a new Massachusetts limited liability company called Altenex, LLC ("Altenex II"), also with a place of business at 7 Liberty Square, Boston. On information and belief, the identical name "Altenex" was chosen with the intent to deprive Petrucci and Sloan of their interest in Altenex I by facilitating the transfer of Altenex I's nascent relationship with Dow to Altenex II.

b. On or about June 17, 2011, Altenex I assigned all of its intellectual property including its relationship with Dow to MMS for nominal consideration of $100.

c. On or about July 7, 2011, MMS assigned its intellectual property including the advanced climate trading technology platform powered by Fluid Trade and deal making capabilities to Altenex II. The recited consideration was $100.

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[3] Like the circumstances that led Airey to notify Boatman that Fluid Trade might not deliver promised software because of financial difficulty, Petrucci and Sloan thought Hayes and Esdaile were misleading Dow because the software required to fulfill obligations to Dow belonged to MMS rather than Altenex I.

d. The foregoing assignments of June 17 and July 7, 2011 were ineffective and void because they were executed without notice to or consent from Petrucci, Lane and STV and therefore violated the Operating Agreements of MMS and Altenex I respectively.

e. In addition, the assignments were fraudulent conveyances in the sense that the purpose was to defraud creditors and minority owners of MMS, Altenex I and Fluid Trade, including Airey and Mark Three. Fluid Trade received no compensation for the Mark Three/Fluid Trade Software, the Demonstration Unit that caused Dow to become a Charter Member of Altenex I or the "advanced climate trading technology platform powered by Fluid Trade."

f. On July 12, 2011, the U.S. Trademark Office issued a registration for the name Altenex® based on an application by Altenex I dated November 23, 2010, for use in connection with "online business networking services that enable companies committed to energy strategies to connect with qualified service providers to supply clean power for their facilities and that assists member companies to implement alternative energy and greenhouse gas reduction efforts." An affidavit of use in the Trademark Office affirmed that Altenex I was using the Altenex® mark in commerce, yet Altenex I was dissolved two days after the date of registration and Altenex II began using the Altenex® registration instead.

g. Upon information and belief: (i) the purpose of the asset transfers described above was to freeze out minority owners of Fluid Trade, MMS and Altenex I including Airey, Mark Three, Petrucci, Sloan and STV, who were not informed of and did not consent to the transactions, by diverting their assets into new entities without consideration; and (ii) the transfers were void because they violated the Operating Agreements of MMS and Altenex I.

h. Hayes and Esdaile were officers and managers of Altenex II, and owned member interests in Altenex II of at least 30% each.

i. Among the assets that Hayes and Esdaile purported to transfer to Altenex II, without consideration and without corporate authorization under the Operating Agreements of MMS and Altenex I, were the Mark Three/Fluid Trade Software, the improvements and developments embodied in the "Demonstration Unit," the advanced climate trading technology platform powered by Fluid Trade and deal making capabilities and Dow's "Charter Membership" in Altenex I.

j. Hayes and Esdaile represented to Petrucci and Sloan that Altenex II would focus exclusively on the creation of a carbon credit and energy purchasing exchange. This is precisely the function for which the Mark Three/Fluid Trade Software had been designed.

k. Hayes and Esdaile deliberately permitted Fluid Trade to be dissolved on March 1, 2012. According to the Secretary of the Commonwealth, Fluid Trade was "void, ARs or Tax Delinquent" with "Tax Due: $254,804.59." The foreseeable effect of the dissolution for tax delinquency was to persuade any creditors who learned of it that the Mark Three/Fluid Trade Software had no value to Hayes, Esdaile or Fluid Trade at a moment when Altenex II was building a business based on that very software. [4]

26. Having eliminated the interests of Airey, Mark Three, Petrucci, Sloan and STV by successively eviscerating Fluid Trade, MMS and Altenex I, Hayes and Esdaile caused Altenex II to pursue opportunities based on the Mark Three/Fluid Trade Software that were well within the scope of the business plans of Fluid Trade, MMS, and Altenex I, while still perpetuating the perception that Fluid Trade, MMS and Altenex I had no prospects and had become defunct. By way of example (but without limiting the scope of this allegation):

a. On information and belief, Fluid Trade had no programming staff after June 2010 until its dissolution and Altenex II had no resources to develop or support any software services.

b. However, in September 2012, Altenex II published a written presentation that described itself as a service that matched energy consumers with renewable energy providers which had obtained an endorsement from Microsoft. The presentation described Altenex II as providing a network for trading energy.

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4 Creditors that Hayes and Esdaile had reason to deceive included tax authorities, Airey, Mark Three, Petrucci, Sloan and STV.

c. The functions attributed to the Altenex II network are precisely those of the Mark Three/Fluid Trade Software. They are covered by the specifications that Airey developed for Fluid Trade in 2008, which Fluid Trade incorporated verbatim into Schedule A of the MMS Software Development & License Agreement of March 25, 2010 and essentially consist of the advanced climate trading technology platform powered by Fluid Trade and deal making capabilities that Altenex I undertook to provide to Dow.

d. Nevertheless, in a Joint Pretrial Memorandum filed on November 8, 2012 in the Fluid Trade Litigation, Hayes, Esdaile and Fluid Trade misleadingly represented to Airey, Mark Three and the Court that "Fluid Trade was forced out of business, deprived of a valuable contract and has been *unable to secure funding to continue its business or even to liquidate at fair market value a significant piece of its assets (i.e., the source code)*" (at p. 23, emphasis added). They misleadingly omitted the material fact that Altenex II was at that moment conducting a business based on an "advanced climate trading technology platform powered by Fluid Trade" and, on information and belief, employed 10 people. The Joint Pretrial Memorandum is incorporated by reference as if fully set forth herein.

e. Consistent with the pattern of conduct regarding Fluid Trade, Hayes and Esdaile permitted MMS to be dissolved for nonpayment of taxes on June 1, 2013, reinforcing the false impression that it was defunct and had no viable prospects.

27. Based on statements and representations made by Hayes, Esdaile and Fluid Trade in the Fluid Trade Litigation, Airey and Mark Three reasonably believed that Fluid Trade was entirely defunct and no longer using the Mark Three/Fluid Trade Software.

28. Airey first learned of the existence of MMS and Altenex I when he fortuitously discovered that Petrucci had commenced an action entitled Petrucci v. Esdaile, Hayes, McIntyre, Altenex, LLC and Altenex Renewable Capital, LLC, 1684CV03998-BLS2 in January 2017 (the "Petrucci Litigation"), the complaint for which is incorporated by reference herein.

Fluid Trade Conveys The "Fluid Trade IP" To Mark Three On March 16, 2013
As Part Of The Consideration For Settlement Of The Fluid Trade Litigation

29. On March 16, 2013, unaware that Hayes and Esdaile had diverted Fluid Trade assets and opportunities to MMS and ultimately Altenex II, Airey and Mark Three entered into a Confidential Settlement Agreement (the "Settlement Agreement") with Hayes, Esdaile and Fluid Trade to resolve the Fluid Trade Litigation. In doing so, they relied on Hayes' and Esdaile's misleading and deceptive statements and omissions in the Fluid Trade Litigation.

30. As part of the Settlement Agreement, Fluid Trade conveyed to Mark Three all right, title and interest in intellectual property, including the Mark Three/Fluid Trade Software, for which the Settlement Agreement defined the term "Fluid Trade IP." The Fluid Trade IP, which includes more than the original Mark Three/Fluid Trade Software, was defined as:

> (i) the "IP" (as that term is defined in Section 1 of said Asset Purchase Agreement)[5], (ii) all improvements, modifications and enhancements made to the Source Code since October 23, 2008 ("Improvements"); (iii) all derivative Source Code created on or after October 23, 2008 ("Developments") and (iv) all copyrights (whether or not registered) to the Source Code and any of its Improvements or Developments, trademarks (whether or not registered) to the Source Code and any of its Improvements or Developments, and trade secrets pertaining to the actual Source Code and any of its Improvements or Developments (collectively with the IP, Improvements, and Developments, the "Fluid Trade IP").

31. The Fluid Trade IP, as so defined, included (among other things): (i) proprietary software codes derived from the Mark Three/Fluid Trade IP that were designed to provide "exchanges" that would use market data to match buyers, sellers and other interested parties; (ii) the data tables and relation between those tables commonly referred to as the "schema"; (iii) the Data Model Generator; (iv) confidential trade secrets regarding the design, structure, functionality and potential future applications of the "a web-hosted, computerized data matching, trading and processing system for the environmental markets and any derivative thereof"; (v) technology embodied in the Demonstration Unit; (vi) the "advanced climate trading technology platform powered by Fluid Trade" and associated deal making

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[5] Referring to the Asset Purchase Agreement between Mark Three and Fluid Trade dated October 23, 2008.

capabilities; and (vii) other technology created after 2010 and derived from or based on the Fluid Trade IP as it existed in 2010.

32. By its terms, the Settlement Agreement reinforced the false impression that Hayes and Esdaile had no ongoing interest in the Fluid Trade IP because Fluid Trade transferred all such interests to Mark Three.

33. Notwithstanding the fact that Fluid Trade had been dissolved a year before because of a $254,804.59 delinquency in taxes, the Settlement Agreement expressly warranted that Hayes, Esdaile and Fluid Trade: (i) were not aware of any liens, pledges or encumbrances on the rights assigned pursuant to the Settlement Agreement; and (ii) had full authority to enter into and consummate the Settlement Agreement.

34. Airey and Mark Three reasonably relied on the Settlement Agreement, and were not aware of Fluid Trade's dissolution or delinquent taxes or that Hayes and Esdaile were using the Fluid Trade IP as the basis for other ventures.

35. The Settlement Agreement required the Fluid Trade Parties (including Hayes and Esdaile) deliver to Mark Three and Airey all materials related to the Fluid Trade IP in possession of the Fluid Trade Parties, whether in written or electronic form. It also required Hayes and Esdaile, as well as Fluid Trade, to cooperate and take such actions as were reasonably required, either contemporaneously with the Settlement Agreement or subsequently, to carry out the provisions and purposes of the Settlement Agreement.

36. The Settlement Agreement contained mutual general releases, but Hayes and Esdaile induced Airey and Mark Three to enter into it by falsely representing that Fluid Trade became defunct in January 2010 and by deceitfully withholding and concealing the existence and activities of MMS, Altenex I and Altenex II, in which they were intimately involved and personally interested. In any event, the releases do not affect obligations arising from the Settlement Agreement.

Hayes and Esdaile Clandestinely Withhold And Caused Altenex II To Secretly Withhold Material Portions Of The Fluid Trade IP

37. On March 27, 2013, Hayes and Esdaile caused their counsel to deliver to Mark Three a total of five (5) computer disks that purported to contain all of the Fluid Trade IP.

38. The software on one of the disks (denoted Version 1.4.2) was last updated in January 2010, reinforcing the false impression that Fluid Trade had become operationally defunct and that there were no further Improvements or Developments after January 2010.

39. However, unbeknownst to Airey and Mark Three, Fluid Trade had employed four software engineers in the period from January 2010 to June 2010 to develop a Demonstration Unit for clean energy trading per the MMS Software Development Agreement.

40. Hayes and Esdaile knowingly and willfully withheld and caused Fluid Trade, MMS and/or Altenex II to withhold substantial portions of the Fluid Trade IP including (without limitation): (i) Improvements and Developments in the software created after January 2010; (ii) confidential trade secrets regarding the design, structure, functionality and potential future applications of "a web-hosted, computerized data matching, trading and processing system for the environmental markets and any derivative thereof"; (iii) technology embodied in the Demonstration Unit; (iv) the advanced climate trading technology platform powered by Fluid Trade" and associated deal making capabilities; and (v) other technology created after 2010 and derived from or based on the Fluid Trade IP as it existed in 2010.

At The Direction Of Hayes & Esdaile, Altenex II Secretly And Wrongfully Uses The Fluid Trade IP After The Settlement Agreement Is Consummated

41. Notwithstanding the Settlement Agreement, Hayes and Esdaile caused Altenex II to develop a business based on the advanced climate trading technology platform powered by Fluid Trade technology and associated deal making capabilities, including web-hosted, computerized data matching, trading and processing system for the environmental markets and various derivatives thereof. By way of example (but without limiting the scope of this allegation):

a. Rejecting the possibility of starting with a clean development environment that might avoid copyright infringement issues, Hayes and Esdaile instead chose to hire defendant Miller in 2014 to become the Chief Technical Officer of Altenex II.

b. Upon information and belief, Hayes and Esdaile caused Altenex II to hire Miller precisely because of his familiarity with the Fluid Trade IP, which by 2014 had become the basis of Altenex II's business.

c. By virtue of his employment at Fluid Trade from January 2009 to May 2010 as a senior software engineer, Miller was tainted by his deep exposure to all aspects of the Fluid Trade IP including new technology that Miller and his colleagues derived from or added to the Fluid Trade IP during the seventh-month period following Airey's resignation.

d. Any Improvements or Developments that Miller or other software engineers created on behalf of Fluid Trade prior to March 16, 2013 (including those that culminated in the advanced climate trading technology platform powered by Fluid Trade and associated deal making capabilities that Altenex I and II undertook to provide to Dow, Microsoft and other partners) were included in the Fluid Trade IP that became Mark Three's property by virtue of the Settlement Agreement.

e. Under copyright dated 2014, Altenex II published a presentation which represents, for example, that "Altenex creates detailed profiles for its customers that are matched against the company's proprietary database. These profiles serve as a customer's RFP for sourcing renewable energy." Furthermore, "Altenex analyzes over 100 layers of data for each project" and thereby "allows customers to make data driven decisions on projects that match their selection criteria."

f. From its public web site, Altenex II claimed that it "has developed a proprietary Market Access Platform where over 500 renewable energy developers with more than 4500 unique wind, solar, biomass, landfill gas and hydro projects compete for your business on your terms. For each customer engagement, every project in the Altenex Market Platform is queried and ranked against the customer's energy usage profile, risk tolerance and selection criteria."

g. The functions claimed by Altenex II in these and other promotional materials are covered by the specifications that Airey wrote for Fluid Trade in 2008 and put into practice with the GCS consumer credit exchange, and that Fluid Trade subsequently incorporated into Schedule A of the MMS Software Development Agreement. Those functions include the advanced climate trading technology platform powered by Fluid Trade and the deal making capabilities that Altenex I and II undertook to provide to Dow on or about October 15, 2010.

h. In May 2016, defendant Miller acquired the additional title of Managing Director, Digital Solutions at Edison Energy while still retaining the title of CTO of Altenex II. Miller's continued employment at Altenex and his new position at Edison Energy are indications that the Fluid Trade IP and technology derived from the Fluid Trade IP continues to be the basis of the Altenex (now Edison Energy) business model.

Hayes, Esdaile and Altenex II Reap The Benefits Of The Fluid Trade IP

42. In January 2015, NRG Energy purchased a 32% interest in Altenex II for $40 million, which translates to a valuation of $125 million for Altenex II.

43. Upon information and belief, Hayes and Esdaile (along with one or more John Does who were members of Altenex II) received substantial distributions and other benefits from that transaction, a substantial amount of which was based on value generated by Fluid Trade IP.

44. In addition, Hayes and Esdaile remained on the board of managers of Altenex II, and received substantial compensation for their perceived expertise in the energy trading business – which was predominantly based on the Fluid Trade IP; and defendant Miller continued to serve as Chief Technical Officer of Altenex II. By virtue of their positions in the organization, their knowledge of the use, copying and misappropriation of the Fluid Trade IP is attributed to Altenex II.

45. On December 31, 2015, Edison acquired all of Altenex II, including the 68% not owned by NRG. The price for NRG's 32% interest was $26 million, indicating a value of $81.25 million for the Altenex II enterprise as a whole. The portion of that price that is attributable to the 68% interests *not* owned by NRG (much of which, upon information and belief, was owned by Hayes and Esdaile), is

estimated to be $55.25 million. Aggregating the two transactions, the total distribution is estimated to be $95.25 million to the original equity owners of Altenex II.

46. Also, on December 31, 2015, Altenex II merged with an Edison Energy subsidiary. It appears that the surviving entity, which is a Delaware limited liability company, took the name Altenex, LLC (Altenex III) and continued the same business model, still using the Altenex® trademark, still maintaining an office at 7 Liberty Square, Boston, MA, where Fluid Trade's office had been located and – upon information and belief – still using the Fluid Trade IP as the base of its energy trading business.

47. Upon information and belief, Hayes and Esdaile (along with one or more John Does, who were members of Altenex II and/or Altenex III) received substantial distributions and other benefits from the transactions with NRG and Edison, a substantial amount of which was based on value generated by Fluid Trade IP.

48. On March 29, 2016, Edison International announced the formation of a subsidiary named Edison Energy, which "brings together" three recently acquired firms including "Altenex," which is described as a "renewable energy procurement company." Upon information and belief, the renewable energy procurement function substantially relies on Fluid Trade IP.

49. Also on or about March 2016, Edison Energy formed Altenex Resources Capital, LLC ("Altenex IV") and on June 1, 2016, Altenex III reportedly "ceased good standing" in its home state of Delaware, signifying that Altenex III is no longer an viable entity.

50. Upon information and belief, Altenex III has transferred its assets and operations to Altenex IV, which continues to carry on the business formerly conducted by Altenex III using the Altenex® trademark with a place of business in Boston but now owned by Edison Energy.

51. Based on published information, it appears that Altenex IV continues to operate the energy exchange of Altenex II relying on the advanced climate trading technology platform powered by Fluid Trade and associated deal making capabilities that Altenex I and II undertook to provide to Dow using Fluid Trade IP as the base for an exchange that matches energy consumers with opportunities to purchase and trade renewable energy.

52. Hayes and Esdaile are currently listed as Senior Vice Presidents of Edison Energy, presumably because of their perceived expertise in the web-based, energy exchange business – which was largely based on the Fluid Trade IP. By virtue of their positions in Edison Energy, their knowledge of and participation in the use, copying and misappropriation of the Fluid Trade IP is attributed to Altenex III, Altenex IV and Edison Energy.

53. In May 2016, defendant Miller acquired the title of Managing Director, Digital Solutions CTO at Edison Energy, LLC while still (apparently) retaining the title of Vice President of Technology according to the Altenex public website. By virtue of these positions, Miller's knowledge is attributed to Altenex III, Altenex IV and Edison Energy.

Subsequent Assignment & Registration Of Copyrights

54. Subsequent to the Settlement Agreement, Mark Three and Airey assigned to Teraque all rights arising from the Settlement Agreement including all right, title and interest in the Fluid Trade IP. He continues to develop products and asset exchanges based on the Fluid Trade IP for the benefit of Teraque.

COUNT I

BREACH OF CONTRACT, WARRANTY AND COVENANT OF GOOD FAITH

55. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

56. Hayes and Esdaile are personally obligated to Mark Three and Airey by the terms of the Settlement Agreement including all representations, warranties, and the implied covenant of good faith and fair dealing.

57. In order to unjustly enrich themselves at the expense of Airey and Mark Three (and ultimately Teraque, which now holds their rights by virtue of assignment), Hayes and Esdaile willfully and intentionally violated the Settlement Agreement. By way of example (but without limiting the scope of this allegation):

a. They failed to disclose material facts including the MMS Software Development Agreement, the MMS Promissory Note, the Demonstration Unit and Improvements and various trade secrets including Developments in the Mark Three/Fluid Trade Software, which would have prompted inquiries regarding their compliance with the Settlement Agreement;

b. They knowingly failed to deliver to Airey and Mark Three all materials related to the Fluid Trade IP, including the advanced climate trading technology platform powered by Fluid Trade and associated deal making capabilities that Altenex I and II undertook to provide to Dow and subsequent developments as described above;

c. By deceptively omitting substantial elements of the Fluid Trade IP (including the Demonstration Unit and subsequent technology) from the disks that they delivered to Airey and Mark Three in March 2013, they concealed the fact that the additional elements even existed;

d. They knowingly and willfully caused Altenex II to use the Fluid Trade IP without any right or authority to the same extent as if Altenex II owned the Fluid Trade IP;

e. They disregarded their continuing obligation to cooperate and take the actions required by paragraph 5 to implement the purpose of the Settlement Agreement (which required fully disclosing and delivering all of the Fluid Trade IP to Mark Three) both at and after its execution and closing;

f. They caused Altenex II to transfer or purport to transfer the Fluid Trade IP, including the advanced climate trading technology platform powered by Fluid Trade and associated deal making capabilities that Altenex I and II undertook to provide to Dow and subsequent developments as described above, to successor entities including Altenex III and Altenex IV in sham transactions knowing that Altenex I and II owned no legitimate interest in the Fluid Trade IP;

g. They falsely warranted and represented in paragraph 9 that there were no encumbrances on the rights embodied in the Fluid Trade IP, knowing full well that: (i) the Fluid Trade IP was then being used and would continue to be used by Altenex II (which they controlled, and in which they owned substantial interests) as the basis for its business; (ii) they had fraudulently led Airey and Mark Three to believe that the Fluid Trade IP was limited to the software contained on the disks; and (iii) Fluid Trade was liable for delinquent taxes;

h. They diverted corporate opportunities that were based on (and depended on) unauthorized use of the Fluid Trade IP into Altenex II and its successors in a deliberate scheme to personally benefit from the Fluid Trade IP thereby depriving Airey and Mark Three (and ultimately Teraque) of the fruits of the Settlement Agreement; and

i. They knowingly made warranties and representations concerning the existence of encumbrances and the status of Fluid Trade that they knew to be false at the moment they were made, all with the intent to deceive Airey and Mark Three.

58. Alternatively, if (contrary to plaintiff's present understanding) Altenex I or II actually did acquire legitimate interests in the Fluid Trade IP prior to March 16, 2013, then Hayes, Esdaile and Fluid Trade breached the Settlement Agreement, warranties and implied covenant of good faith by failing to deliver unencumbered ownership of the Fluid Trade IP.

59. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has acquired, retained or used the Fluid Trade IP without authority, and also to expenses incurred in prosecuting this litigation.

COUNT II

CONVERSION

60. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

61. The knowledge and intentions of Hayes and Esdaile are attributed to Altenex II, Altenex III, Altenex IV and Edison Energy because Hayes and Esdaile were at all material times officers, managers and/or substantial owners of each of those entities and acted with the intent to benefit those entities in furtherance of their personal interests.

62. Hayes, Esdaile, Altenex II, Altenex III and Altenex IV have converted the Fluid Trade IP by using it as the basis to create and operate the advanced climate trading technology platform powered by Fluid Trade and associated deal making capabilities that Altenex I and II undertook to provide to Dow and subsequent developments as described above.

63. Upon information and belief, Hayes, Esdaile, Altenex II, Altenex III and Altenex IV have reaped (and continue to reap) substantial gains and profits based on the Fluid Trade IP and technology derived from the Fluid Trade IP.

64. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has acquired, retained or used the Fluid Trade IP without authority.

COUNT III

PALMING OFF

65. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

66. Defendants have palmed off the Fluid Trade IP by expressly or impliedly representing to actual and prospective investors, customers and business associates that they owned all necessary right, title and interest in the technology (i.e., the Fluid Trade IP) that provided the foundation for their energy exchange services. By way of example (but without limiting the scope of this allegation):

a. They presented the Demonstration Unit to Dow, Microsoft and other investors and potential customers as an asset of Altenex I without disclosing that Altenex I had no right to use the Fluid Trade IP;

b. They issued documents representing that Altenex services were "powered by Fluid Trade," knowing that Altenex had no right to use the Mark Three/Fluid Trade Software;

c. They solicited and accepted investments such as Dow's Charter Membership based on express and implied representations that their energy exchange is based on their own proprietary technology when in fact it was primarily based on the Fluid Trade IP;

d. They published promotional materials and customer solicitations that represented that they rightfully own an advanced climate trading technology platform and associated deal making capabilities when the technology consists of the Fluid Trade IP;

e. In a series of mergers and acquisitions, they have expressly or impliedly represented that they rightfully own or control the technology that provides the advanced climate trading technology platform and associated deal making capabilities when it actually consists of the Fluid Trade IP that now belongs to Teraque; and

f. They continue to use and benefit from the Fluid Trade IP without disclosing that it was created by Airey and Mark Three, and now belongs to Teraque.

67. Contrary to such representations, the energy exchange services of Altenex II, Altenex III and Altenex IV are based on the Fluid Trade IP, which was transferred to Airey and Mark Three (and subsequently assigned to Teraque) by virtue of the Settlement Agreement.

68. Upon information and belief, Hayes, Esdaile, Altenex II, Altenex III and Altenex IV have reaped (and continue to reap) substantial gains and profits based on the Fluid Trade IP and technology derived from the Fluid Trade IP.

69. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has acquired, retained or used the Fluid Trade IP without authority.

COUNT IV

MASSACHUSETTS TRADE SECRET ACT

70. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

71. The Fluid Trade IP includes trade secrets. By way of example (but without limiting the scope of this allegation) the trade secrets include: (i) work done by Fluid Trade pursuant to the MMS Software Development Agreement; (ii) the data tables and relation between those tables commonly referred to as the "schema", (iii) The Data Model Generator, (iv) technology embodied in the Demonstration Unit; (v) the advanced climate trading technology platform powered by Fluid Trade and associated deal making capabilities that Altenex I and II undertook to provide to Dow; and (vi) other technology that derived from the Mark Three/Fluid Trade Software as well as Improvements and Developments that Hayes and Esdaile fraudulently omitted from the disks that were delivered to Airey and Mark Three pursuant to the Settlement Agreement (collectively, the "Trade Secrets").

72. Upon information and belief, the possessors of the Trade Secrets have at all material times taken reasonable steps to preserve the confidentiality of the Trade Secrets, and in any event, they

concealed the very existence of the Trade Secrets developed after January 2010 from Airey and Mark Three. By way of example (but without limiting the scope of this allegation), the MMS Software Development Agreement required MMS to safeguard Fluid Trade's "Confidential Information" including know-how, plans, designs, processes, formulae, manufacturing techniques, discoveries, inventions, product specifications, drawings, photographs, models, sales or marketing information, customer or supplier information, pricing or cost information, or any other technical or business information in any form or medium that Fluid Trade revealed to MMS.

73. Upon information and belief, Hayes and Esdaile misappropriated and caused Miller, Altenex II, Altenex III and Altenex IV to misappropriate and use the Trade Secrets as their own property, without authority and in violation of M.G.L. c. 93, §42, after having conveyed ownership to Mark Three (which subsequently conveyed them to Teraque).

74. Hayes and Esdaile, at all material times, were aware that all right, title and interest in the Trade Secrets had been conveyed to Mark Three by virtue of the Settlement Agreement. By virtue of their positions as officers, directors and managers, the knowledge and activities of Hayes, Esdaile and Miller is attributed to Altenex II, Altenex III, Altenex IV and Edison Energy.

75. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has infringed the trade secrets contained in the Fluid Trade IP, and enhanced damages under M.G.L. c. 93, §42.

COUNT V

FRAUD & CONCEALMENT

76. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

77. Throughout the events leading to the Settlement Agreement, Hayes, Esdaile and Fluid Trade falsely represented to Airey, Mark Three and the Superior Court that Fluid Trade was defunct, had become insolvent, had no viable business prospects and was unable to monetize the Fluid Trade IP.

78. Initially, their intent was to gain a tactical advantage in the Fluid Trade Litigation by persuading Airey and Mark Three that their counterclaims against Hayes, Esdaile and Fluid Trade were

not worth pursuing because (as they misleadingly asserted) Fluid Trade was a failed venture. Later, it was to conceal their development of valuable opportunities based on the Mark Three/Fluid Trade Software which they diverted to MMS and the successive Altenex companies.

79. Hayes, Esdaile and Fluid Trade intended for Airey and Mark Three to rely on the false representations in entering into the Settlement Agreement, and they did so.

80. Hayes, Esdaile and Fluid Trade fraudulently misrepresented facts and concealed material information from Airey and Mark Three that would have affected negotiation of the Settlement Agreement.

81. In addition, Hayes, Esdaile and Fluid Trade fraudulently conveyed Fluid Trade assets including the Fluid Trade IP to MMS, Altenex II, Altenex III and Altenex IV without fair consideration with the intention to defraud creditors and other interested parties, all for the purpose of enriching themselves at the expense of Airey, Mark Three and eventually Teraque.

82. At all material times, Hayes and Esdaile were aware that the assets in question were being transferred without corporate authority and without good title. Moreover, Hayes and Esdaile personally directed the transfers and contributed their own knowledge of the Fluid Trade IP to the businesses of the transferees.

83. By virtue of the foregoing, Hayes and Esdaile violated a continuing duty of disclosure based on (among other things) paragraph 5 of the Settlement Agreement.

84. The knowledge and intentions of Hayes and Esdaile are attributable to MMS, Altenex II, Altenex III and Altenex IV by virtue of their roles as officers, directors, managers and substantial owners or shareholders of those entities and the fact that they intended their actions to benefit those entities.

85. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant.

COUNT VI

UNFAIR AND DECEPTIVE ACTS OR PRACTICES

86. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

87. Each of the defendants is engaged in trade or commerce.

88. Defendants have engaged in unfair and deceptive acts or practices that violate M.G.L. c. 93A, §2. By way of example (but without limiting the scope of this allegation):

a. Hayes and Esdaile have knowingly and intentionally breached the Settlement Agreement including warranties and the implied covenant of good faith by failing to deliver the Fluid Trade IP, including the Trade Secrets;

b. With knowing participation of Hayes and Esdaile, and at their direction, Altenex II, Altenex III and Altenex IV have deceptively concealed, withheld and failed to even disclose the existence of the Fluid Trade IP, including the Trade Secrets, with imputed knowledge that the Fluid Trade IP had been transferred to Mark Three (and ultimately Teraque);

c. With knowing participation of Hayes and Esdaile, and at their direction, Altenex II, Altenex III and Altenex IV have converted the Fluid Trade IP (including the Trade Secrets) to their own use without any color of authority with imputed knowledge that the Fluid Trade IP had been transferred to Mark Three (and ultimately Teraque);

d. With knowing participation of Hayes and Esdaile, and at their direction, Altenex II, Altenex III and Altenex IV have wrongfully palmed off the Fluid Trade IP (including the Trade Secrets) and the facilities that it provides by expressly or impliedly claiming ownership, all with imputed knowledge that the Fluid Trade IP had been transferred to Mark Three (and ultimately Teraque);

e. With knowing participation of Hayes and Esdaile, and at their direction, Altenex II, Altenex III and Altenex IV have wrongfully misappropriated and used the Fluid Trade IP including the Trade Secrets, all with imputed knowledge that the Fluid Trade IP had been transferred to Mark Three (and ultimately Teraque).

89. Hayes and Esdaile have at all material times acted deliberately, willfully and maliciously with bad faith intention to deprive Airey and Mark Three (and ultimately Teraque) of the fruits of their

bargain and to enrich themselves and entities in which they owned substantial interests by misappropriating and using the Fluid Trade IP and Trade Secrets without authority or justification.

90. Altenex II, Altenex III, and Altenex IV are charged with the knowledge and intentions of Hayes and Esdaile and are therefore liable to the same extent.

91. Teraque is entitled to damages including actual damages caused by each defendant's unfair or deceptive acts or practices, as well as disgorgement of improperly gained profits and unjust enrichment and enhanced damages under M.G.L. c. 93A, §11.

COUNT VII

DIRECT INFRINGEMENT OF COPYRIGHT

92. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

93. On March 22, 2017, the Copyright Office issued copyright registrations no. TXu 2-026-284 (the "Works") to Teraque for computer software that Fluid Trade conveyed to Mark Three pursuant to the Settlement Agreement. The copyrighted Works include software on the disks that Hayes and Esdaile delivered to Airey and Mark Three in March 2013. A true and correct copy of the Certificate of Registration as issued by the U.S. Copyright Office on March 22, 2017 is attached as **Exhibit F**.

94. The software embodied in the Works was originally created by Airey on behalf of Mark Three, which subsequently assigned all rights, title and interest to Fluid Trade, together with Improvements and Developments made prior to January, 25, 2010.[6]

95. By virtue of the Settlement Agreement, Fluid Trade transferred all rights, title and interest in the Works (including registered and unregistered copyrights) to Mark Three, which in turn transferred them to Teraque which owns the registration.

96. Teraque has complied in all respects with the Copyright Act of 1976, as amended, 17 U.S.C. §101 et seq., and all other laws governing copyright and has secured the exclusive rights and privileges in and to the copyright of the Works.

[6] The copyrighted Works do not include proprietary information or technology such as that embodied in the Demonstration Unit or other subsequently derived technology that Hayes, Esdaile and Fluid Trade failed to deliver pursuant to the Settlement Agreement.

97. At all material times, defendants have had access to the Fluid Trade IP as embodied in the Works; and upon information and belief, the software copied and used by Miller, Altenex II, Altenex III and Altenex IV for purposes of energy trading is probatively and substantially similar to the Works.

98. Defendants have deliberately and willfully infringed Teraque's copyrights in the Works by copying, using and promoting the services provided by the Works.

99. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has infringed its copyrights in the Works in furtherance of the interests of MMS, Altenex I, Altenex II, Altenex III and Altenex IV.

COUNT VIII

CONTRIBUTORY INFRINGEMENT OF COPYRIGHT

100. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

101. Defendants, especially including Hayes, Esdaile and Miller, are liable for contributory infringement because they have, with knowledge of the infringing activity, deliberately, knowingly and willfully encouraged, aided, directed, induced or otherwise contributed to the infringing activities of Altenex I, Altenex II, Altenex III and Altenex IV.

102. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has infringed its copyrights in the Works.

COUNT IX

VICARIOUS LIABILITY FOR COPYRIGHT INFRINGEMENT

103. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

104. Defendants and their predecessors, especially Altenex II, Altenex III and Altenex IV, are vicariously liable for deliberate, knowing and willful infringement of Teraque's copyrights because they are charged with the knowledge and intentions of Hayes, Esdaile and Miller.

105. Likewise, Hayes, Esdaile, and Miller are personally and vicariously liable for the infringing conduct of Altenex II, Altenex III and Altenex IV because they were in a position to (and did

in fact) control the infringing defendants, and directly benefited financially from their infringing conduct.

106. Teraque is entitled to damages including actual damages, profits and unjust enrichment of each defendant who has infringed its copyrights in the Works.

COUNT X

REACH & APPLY DISTRIBUTIONS TO JOHN DOE DEFENDANTS

107. Teraque incorporates the foregoing paragraphs as fully as if set forth at length herein.

108. At all material times, Altenex II, Altenex III, Altenex IV and Edison Energy are charged with the knowledge and intentions of Hayes and Esdaile based on their positions as officers, managers and/or members of those organizations, and the fact that Hayes and Esdaile intended their conduct to add value to Altenex II, Altenex III and Altenex IV based on the misappropriated Fluid Trade IP.

109. Upon information and belief, Altenex III and its predecessor Altenex II have made distributions to Hayes, Esdaile and the John Doe Defendants based on profits or gains based on the sale of a 32% interest to NRG in January 2015 and the acquisition by Edison Energy in December 2015.

110. Upon information and belief, the valuation of Altenex II and Altenex III for purposes of those transactions, and the amounts distributed to members of Altenex II and Altenex III, depended largely on the value contributed by the Fluid Trade IP. Indeed, if it were not for the Fluid Trade IP, neither Altenex II nor Altenex III would have been a viable entity.

111. Upon information and belief, Altenex III has failed to make a provision that is sufficient to provide compensation for the claims of Mark Three, Airey and ultimately Teraque as required by §18-804 of the Delaware Limited Liability Company Act.

112. By virtue of the facts alleged above, Hayes, Esdaile and each John Doe are liable for the portion of the distributions required to provide compensation for the claims of Mark Three, Airey and ultimately Teraque as asserted in this Complaint pursuant to §18-804 of the Delaware Corporation Act and M.G.L. c. 109A, §§5 and 6.

WHEREFORE, Teraque demands:

A. Specific performance of any acts (if any) that still need to be taken by Hayes and Esdaile to perfect the conveyance of the Fluid Trade IP to Teraque as assignee of Mark Three;

B. Injunctive relief to prevent any of the Defendants from infringing Teraque's copyrighted Works;

C. An award of actual damages to the full extent permitted by law, including defendants' profits attributable to infringement or misappropriation of the Fluid Trade IP;

D. Disgorgement of gains or profits attributable to infringement or misappropriation of the Fluid Trade IP;

E. Enhanced damages to the full extent permitted under M.G.L. c. 93, §42, 18 U.S.C. §1833 and M.G.L. c. 93A, §11;

F. An award of attorneys' fees and costs to the full extent permitted by the Settlement Agreement, M.G.L. c. 93, §42, 18 U.S.C. §1833 and M.G.L. c. 93A, §11 or otherwise; and

G. An Order to reach and apply assets distributed to John Doe Defendants to the extent appropriate to satisfy the judgment.

PLAINTIFF DEMANDS A TRIAL BY JURY

TERAQUE, INC.

By its attorneys,

/s/ James C. Donnelly, Jr.

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Dated: April 24, 2017

CERTIFICATE OF SERVICE

I, James C. Donnelly, Jr., hereby certify that this document(s), filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 24, 2017.

/s/ James C. Donnelly, Jr.
James C. Donnelly, Jr., Esq.

Dated: April 24, 2017